

CHAPTER NO. 780

HOUSE BILL NO. 2343

By Representatives Ferguson, Armstrong, Lois DeBerry, Overbey, Pruitt, Patton, Sherry Jones, Russell Johnson, Shepard, Borchert, Marrero, DuBois, Sontany, Langster, Eldridge, Harwell, Harmon, Hackworth, Walker, Baird, Pleasant, Crider, Hargett, Winningham, Wood, Odom, Hensley, Harry Brooks, Black, McDaniel, Yokley, Sharp, Towns, Shaw, Ulysses Jones, Hagood, Todd, Kent, Brenda Turner, Hargrove, Gresham, Brown, Harrison, Fitzhugh, Litz, Sargent, McDonald, Vaughn, Hawk, Coleman, West, Bone, Head, Garrett, Vincent, Hood, Dunn, Maddox, Buttry, Montgomery, Fowlkes, Phillip Johnson, Bowers, Roach, Lynn, Windle, Bittle, John DeBerry and Mr. Speaker Naifeh

Substituted for: Senate Bill No. 2364

By Senators Person, Burks, Kilby, Graves, Trail, Kurita, Atchley, Beavers, Bryson, Burchett, Clabough, Cohen, Cooper, Crowe, Crutchfield, Dixon, Ford, Fowler, Harper, Haynes, Henry, Herron, Jackson, Ketron, Kyle, McLeary, McNally, Miller, Norris, Ramsey, Southerland, Williams and Mr. Speaker Wilder

AN ACT to amend Tennessee Code Annotated, Title 3; Title 4; Title 29; Title 39; Title 40; Title 63; Title 68 and Title 71, relative to abuse of certain persons.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 40-11-150, is amended by adding the following as a new subsection (k):

(k)

(1) Any offender arrested for a violation of section 71-6-119, involving physical harm or abuse in which the alleged victim is an adult of advanced age as such terms are defined in section 71-6-102, shall not be released within twelve (12) hours of such arrest if the official authorized to set bail in such case finds that such offender would be a continued threat to the alleged victim if released within such twelve (12) hour period. Such official may, however, release the accused in less than twelve (12) hours if the official determines that sufficient time has or will have elapsed for the victim to be protected.

(2) Such written findings must be attached to the warrant and shall be preserved as a permanent part of the record. The arresting officer shall make official note of the time of the arrest in order to establish the beginning of the twelve-hour period provided for in this subsection.

(3) A person who violates a condition of release imposed pursuant to this section shall be subject to immediate arrest with or without a warrant as provided in section 40-7-103(b). Such a violation shall be punished as contempt of the court imposing the conditions and the bail of such violator may be revoked.

SECTION 2. Tennessee Code Annotated, section 68-11-254(a)(1), is amended by inserting the language and punctuation, "the statewide toll-free number of the division

of adult protective services," before the language "and the state Medicaid", and after the language and punctuation "and advocacy network,".

SECTION 3. Tennessee Code Annotated, section 68-11-254(a)(2), is amended by deleting that subdivision in its entirety, and substituting instead the following:

A statement that the resident may file a complaint concerning abuse, neglect, exploitation, misappropriation of resident property in the facility, and noncompliance with the advance directives requirements with the state survey and certification agency; and that a resident may also seek assistance or file a complaint with the division of adult protective services.

SECTION 4. Tennessee Code Annotated, Section 71-6-102(5) is amended by redesignating the existing language as subsection (5)(a), and adding the following as a new subsection (5)(b):

A financial institution is not a caretaker of funds or other assets unless such financial institution has entered into an agreement to act as a trustee of such property or has been appointed by a court of competent jurisdiction to act as a trustee with regard to the property of the adult;

SECTION 5. Tennessee Code Annotated, Section 71-6-120, is amended by adding the following as a new appropriately designated subsection:

A financial institution, officer, director, or employee thereof, shall not be liable in any civil action brought by or on behalf of a disabled adult or elderly person for recovery of damages under this chapter, unless prior to such civil action, the financial institution, officer, director, or employee thereof, shall have been convicted of a violation of Tennessee Code Annotated, Section 71-6-117. Provided, however, this provision shall not apply to theft or conversion by an employee, officer or director of a financial institution or liability arising under other provisions of law.

SECTION 6. Tennessee Code Annotated, Title 71, Chapter 6, Part 1, is amended by adding the following as a new appropriately designated section:

(a) All offices of physicians licensed pursuant to title 63, chapters 6 or 9, all health care facilities licensed pursuant to title 68, chapter 11, all senior centers, all community centers and all pharmacies shall post the following in the main public entrance:

(1) contact information including statewide toll-free number of the division of adult protective services, and the number for the local district attorney's office; and

(2) a statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the division concerning abuse, neglect, and exploitation.

(b) The information listed in subsection (a) shall be posted on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height.

(c) All nursing homes, assisted living facilities and any other residential facility licensed by the board of licensing health care facilities shall upon admission provide to each resident the division of adult protective services' statewide toll-free number.

(d) Any licensed nursing home that complies with the requirements of section 68-11-254 shall be exempt from the requirements of subsections (a) and (b).

SECTION 7. Tennessee Code Annotated, Title 71, Chapter 6, Part 1, is amended by adding the following as a new appropriately designated section:

(a) The division of adult protective services of the department of human services shall establish a toll-free telephone service to enable citizens within the state to call the division free of charge to report abuse, neglect, or exploitation and to seek relevant assistance from the division in such matters.

SECTION 8. Tennessee Code Annotated, Section 40-15-105(a)(3) is amended by adding the following at the end of the sixth sentence before the period:

“and after the effective date of this act if the individual is charged with violation of a criminal statute the elements of which constitute abuse, neglect or misappropriation of the property of a vulnerable person as defined in section 68-11-1004(a), the memorandum of understanding or diversion order contains a provision that the individual agrees without contest or any further notice or hearing that his or her name shall be permanently placed on the registry governed by section 68-11-1004 a copy of which shall be forwarded to the department of health.”

SECTION 9. Tennessee Code Annotated, Section 40-35-313 is amended in subsection (a)(3)(A) by adding the following new sentence at the end of that item:

“No order deferring further proceedings and placing the defendant on probation as authorized by this subsection (a) may be entered by the court if the defendant was charged with violation of a criminal statute the elements of which constitute abuse, neglect or misappropriation of the property of a vulnerable person as defined in section 68-11-1004(a) on or after effective date of this act unless the order contains a provision that the defendant agrees without contest or any further notice or hearing that his or her name shall be permanently placed on the registry governed by section 68-11-1004 a copy of which shall be forwarded to the department of health.”

SECTION 10. Tennessee Code Annotated, Section 68-11-1004 is amended by deleting the language of that section in its entirety and substituting instead the following:

(a) As used in this section, unless the context requires otherwise:

(1) “Criminal disposition” means the disposition of criminal charges constituting an offense against a vulnerable person as that term is defined by this subsection either by conviction, or by pre-trial diversion authorized by any court pursuant to section Title 40, Chapter 15, or by an order deferring further proceedings and placing an individual on probation (post-trial diversion) issued pursuant to Title 40, Chapter 35.

(2) “Offense against a vulnerable person” means any act which constitutes abuse, or neglect or misappropriation of the property of a vulnerable person, or any crime the elements of which constitutes abuse, or neglect or misappropriation of the property of a vulnerable person.

(3) "Vulnerable Person" means anyone who is under eighteen (18) years of age, or who, by reason of advanced age or other physical or mental condition, is vulnerable to or who has been determined to have suffered from abuse, neglect, or misappropriation of property, and who was, at the time of the commission of an alleged offense against him or her, receiving protective services from a state agency pursuant to law, or in the care of either a state agency, or an entity which is licensed or regulated by a state agency, or an entity providing services under the provisions of a contract between that entity and a state agency.

(b)

(1) The department of health shall include the name of an individual on the registry when it receives notification from an agency of Tennessee state government that the individual has been found by that agency, pursuant to that agency's procedures and definitions, to have committed abuse, or neglect or misappropriation of the property of a vulnerable person.

(2) Such notification shall consist of a copy of an emergency, initial, or final administrative order, a judicial order, or other evidence indicating that the agency has afforded the individual an opportunity for an administrative due process hearing pursuant to the requirements of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3, or equivalent judicial or administrative procedures; provided, that nothing in this part shall require the state agency to establish any new procedures or to modify any existing procedures it may use for the provision of due process to such individual.

(3) Such notification shall include the individual's last known mailing address, social security number, and the agency's definition of abuse, neglect, or misappropriation of property which it used in making the determination.

(c) The department shall also include an individual's name on the registry when it receives a copy of a criminal disposition from the Tennessee bureau of investigation, or other federal, state or local law enforcement agency, or court, or criminal justice agency, indicating that such criminal disposition against the named individual was the result of an offense against a vulnerable person.

(d) Upon receiving the notification set out in subsection (b) or (c), the department shall, in addition to entering the individual's name on the registry, also maintain and make available upon request, the name of the reporting agency and the applicable definition of abuse, neglect, or misappropriation of property, supplied by that agency. The individual's name once entered on the registry shall remain on the registry, except as provided in subsection (g), even if such individual meets the requirements of any criminal disposition and regardless of any expungement that may be ordered by any court or that may take place by operation of law in connection with such criminal disposition. Provided however, any expungement reported to the department shall result in the removal from the registry of everything regarding the criminal disposition, except the individual's name, and destruction of any documentation of such criminal disposition.

(e) Upon entry of this information, the department will notify the individual, at his or her last known mailing address, of his or her inclusion on the

registry. Although the individual will not be entitled or given the opportunity to contest or dispute either the prior hearing conclusions, or the content or terms of any criminal disposition, or attempt to refute the factual findings upon which such are based, the individual may challenge the accuracy of the report that such a criminal disposition has occurred, or such hearing conclusions were made. If the individual makes such a challenge within thirty (30) days of notification of inclusion on the registry, the commissioner, or the commissioner's designee, shall afford the individual an opportunity for a hearing on the matter which complies with the requirements of due process and the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3.

(f) If the department receives from the Tennessee bureau of investigation or other federal, state or local law enforcement agency, or any court, or criminal justice agency documentation substantiating that an offense against a vulnerable person has been committed by an individual, whose name has not already been placed on the registry pursuant to subsections (b) or (c), the department shall, prior to placing the individual's name on the registry, afford that individual an opportunity for an administrative due process hearing pursuant to the requirements of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3, or equivalent judicial or administrative procedures; provided, that nothing in this part shall require the department to establish any new procedures or to modify any existing procedures it may use for the provision of due process. If, as a result of such hearing, the department finds the individual committed an offense against a vulnerable person the department shall include the name of the individual on the registry.

(g) Any individual's name shall be immediately removed from the registry if:

(1) Upon a hearing, the commissioner, or his designee, determines that the initial report of a criminal disposition, or the administrative hearing conclusions never occurred; or

(2) At the final step taken in an appellate process, a reported conviction, or an emergency order or administrative hearing result is reversed.

SECTION 11. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 12. This act shall take effect July 1, 2004, except that the provisions of section 6 shall take effect January 1, 2005, the public welfare requiring it.

PASSED: May 12, 2004



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES



JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 28th day of May 2004



PHIL BREDESEN, GOVERNOR